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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 09/530,085 | 08/14/2000 | STEPHEN JACOBS | A31222-PCTUSA | 3842 |
| 21003 | 7590 | 12/22/2003 | | |
| BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112 | | | EXAMINER MEHRA, INDER P | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2666 | 9 |
| DATE MAILED: 12/22/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/530,085

Applicant(s)

JACOBS ET AL.

Examiner

Inder P Mehra

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This is in response to an amendment A dated: 10/2/03 which has been fully considered and made of record. Based on this amendment, claims 1-2, 13-14 and 25-26 have been amended. Claims 1-36 are now pending. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-13, 15-25, and 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keshav in view of **Derby et al** (US Patent no. 5,359,593), hereinafter, Derby.

For claims 1, 11, 13, 23, 25, and 35, Keshav discloses a method and system for achieving and maintaining data transmission rates (bandwidth) between a source and a destination node in a digital data network, refer to abstract. The system of Keshav, further, includes the means for maintaining an estimate of bandwidth available from source node from to the destination node,

Art Unit: 2666

refer to col. 6 lines 9-25; and means for adjusting transmission based on the estimate, refer to col. 6 lines 25-31.

Keshav does not disclose expressly, “real time”;

Derby discloses , “real time data delivery”, refer to col. 5 lines 50-55; also discloses, “adjusting transmission based on the estimate in order to main real time transmission, refer to abstract and col. 1 lines 10, 18-25, col. 2 lines 30-33.

It would have been obvious to a person of ordinary skill in the art at the time of invention to compress video data before transmission across the network. A person of ordinary skill in the art would have been motivated to employ Derby’s Dynamic bandwidth estimation and adaptation into Keshav’s system for a method and apparatus for achieving and maintaining optimum transmission rates in order to compress video data for transmission. The suggestion/motivation to do so would have been to optimize the use of bandwidth and storage space.

For claims 3, 15, and 27, the system of Keshav monitors packet loss based on acknowledgments from the destination node, refer to col. 7 line 60 through col. 8 line 5;

For claims 4, 7, 16, 19, 28 and 31, Keshav discloses maintenance of count of packet/bytes, refer to col. 7 lines 66, to col. 8 line 2;

For claims 5, 6, 8, 9, 17, 18, 20, 21, 29, 30, 32, and 33, Keshav discloses maintaining the data transmission rates of as to how many packets/bytes are allowed to be transmitted (upper bound) , refer to abstract, in accordance with TCP (IP) congestion window, refer to col. 2 line 31.

For claims 10, 12, 22, 24, 34, and 36, the system of Keshav also retransmits a packet which has been determined as a lost packet at the destination node, refer to col. 8 lines 32-35.

4. Claims 2, 14, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keshav as applied to claims 1, 13 and 26 above, and further in view of **Gittins et al** (US Patent no. 5,526,350), hereinafter, Gittins.

For claims 2, 14, and 26, Keshav discloses all the features of the subject matter, including the transmission of the system utilizing IP protocol which supports transmission in real time, refer to col. 5 lines 48-53, as explained in paragraph 3 above, with the exception of the following limitation of claims 2, 14 and 26:

- data comprises video data;

Gittins discloses data comprises compressed video data, refer to col. 7 line 21-23;

It would have been obvious to a person of ordinary skill in the art at the time of invention to compress video data before transmission across the network. A person of ordinary skill in the art would have been motivated to employ Gittins's communication network into Keshav's system for a method and apparatus for achieving and maintaining optimum transmission rates. in order to compress video data for transmission. The suggestion/motivation to do so would have been to optimize the use of bandwidth and storage space.

Response to Arguments

5. Applicant's arguments filed 10/2/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Keshav does not disclose "real time data", Derby, refer to office action above, discloses real time data, refer to col. 5 lines 50-55. In response to applicant's argument that "maintain an estimate of bandwidth available" is not disclosed by Keshav, and Gittens, refer to Gittens col. 7 lines 20-25.

In the light of above explanation, arguments by applicant are not persuasive.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2666

Conclusion

7.8. Any enquiry concerning this communication should be directed to Inder Mehra whose telephone number is (703) 305-1985. The examiner can be normally reached on Monday through Friday from 8:30AM to 5:00 PM.

If attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Seema Rao, can be reached on (703) 308-5463. Any enquiry of a general nature of relating to the status of this application or processing should be directed to the group receptionist whose telephone number is (703) 305-4700.

8.8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, DC. 20231

Or faxed to (703) 872-9314.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal drive, Arlington, VA, sixth floor (Receptionist).

Inder Mehra
Inder Mehra

December 18, 2003

DANG TON
PRIMARY EXAMINER